

Appeal from decision of California State Office, of Land Management, declaring unpatented mining claims abandoned and void. CA MC 98365 through CA MC 98374.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention of Hold Mining claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each calendar year thereafter. The assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Elliott Glasser, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Elliott Glasser appeals the decision of the California State Office, Bureau of Land Management (BLM), dated June 10, 1983, which declared the unpatented Yoke #10 the Chan Jade through Yoke #19 the Chan Jade lode mining claims, CA MC 98365 through CA MC 98374, abandoned and void for failure to file on or before December 30, 1982, evidence of performance of annual assessment work or notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2. The claims had been located in September 1981, and recorded with BLM October 16, 1981.

Appellant states that a copy of the recorded proof of labor for 1982 was not returned to him from Siskiyou County, California, until January 20, 1983, notwithstanding that the proof of labor was recorded in the county on December 9, 1982. The envelope from the county record bears a postmark of January 18, 1983. Immediately upon receipt of the document, appellant transmitted it to BLM.

[1] Under section 314(a) of FLPMA, the owner of a mining claim located after October 21, 1976, must file a notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the local state office where the location notice is recorded and in the proper office of BLM on or before December 30 of every calendar year after the year of location of the claim. This requirement is mandatory, not discretionary. Failure to comply is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with the authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, *supra* at 196, 88 I.D. at 371-72.

Although appellant states the proof of labor was promptly mailed to BLM upon receipt from the county recorder, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if timely filing of the instrument was caused by delay in the county recorder's office, that fact would not excuse the claimant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980). Filing is accomplished only when a document is received by and date stamped with BLM.

BLM has stated that it did not receive the 1983 proof of labor until January 24, 1983. Appellant has not argued to the contrary. Therefore, it must be found that BLM was not acting properly in its decision declaring the mining claims abandoned and void under the terms of FLPMA.

Appellant may wish to consult with BLM about the possibility of relocating these mining claims.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge

